



PATENT

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Michael E. Connors

Printed name of person mailing correspondence

Signature of person mailing correspondence

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Müller-Hermelink et al.	Confirmation No.:	8646
Serial No.:	10/764,730	Art Unit:	1642
Patent No.:	7,378,247	Customer No.:	21559
Filed:	January 26, 2004	Examiner:	M. Halvorson
Issue Date:	May 27, 2008		
Title:	NEOPLASM-SPECIFIC POLYPEPTIDES AND THEIR USES		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705

In response to the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) set forth in the Issue Notification mailed in connection with the above-captioned patent application on May 7, 2008, and as set forth on the cover of U.S. Patent No. 7,378,247, issued May 27, 2008, Applicants hereby request reconsideration of the patent term adjustment. Applicants submit that the current patent term adjustment should be 15 days, not 0 days as shown in the Patent Term Adjustment History on the PAIR system

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(Exhibit 1).

Applicants, to comply with their duty of candor and good faith to the Office, noted in a paper entitled REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, which was received by the Office on January 22, 2008, that the determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed with the Notice of Allowance on November 19, 2007 appeared to be in error. Applicants further stated that the calculation of the patent term adjustment period was less than that calculated by the Office and Applicants requested that the Office, prior to issuance of the patent, recalculate the patent term adjustment.

The Office, on April 22, 2008, mailed a Letter Regarding Patent Term Adjustment to Applicants. In this letter, the Office grants Applicants' request for review and states:

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is ten (10) days. (Emphasis original.)

Applicants do not dispute this calculation.

However, Applicants note that the Office, in the current Patent Term Adjustment History on PAIR (Exhibit 1), attributes 120 days of delay to Applicants, apparently for filing the Request for Reconsideration of Patent Term Adjustment after the mailing of the Notice of Allowance. As set forth below, Applicants submit that the 120-day delay is improperly attributed to Applicants.

The rules governing patent term adjustment due to examination delay are provided

for in 37 C.F.R. § 1.702, which states:

[T]he term of an original patent shall be adjusted if issuance of the patent was delayed due to the failure of the Office to:

\* \* \*

(4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

37 C.F.R. § 1.703 states:

(a) The period of adjustment under 1.702(a) is the sum of the following periods:

\* \* \*

(6) The number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

On January 22, 2008 Applicants paid the issue fee. There were no outstanding requirements. The patent issued on May 27, 2008, resulting in a patent term adjustment of 5 days due to the failure of the Office to issue a patent within four months of payment of the issue fee.

With regard to reductions in patent term adjustment, 37 C.F.R. § 1.704(c) states:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances.

\* \* \*

(10) Submission of an amendment under § 1.312 or other

paper after a notice of allowance as been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

- (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
- (ii) Four months.

In addition, 37 C.F.R. § 1.704(e) states:

Submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement or reduced patent term adjustment) *will not be considered a failure to engage in reasonable efforts to conclude prosecution ... of the application under paragraph (c)(10) of this section.* (Emphasis added.)

Applicants submit that the submission of the Request for Reconsideration of Patent Term Adjustment with the payment of the issue fee squarely falls within the exception set forth in 37 C.F.R. § 1.704(e). The Request for Reconsideration solely directed the Office's attention to an error in the calculation of patent term adjustment that was in Applicants' favor. As such, Applicants submit attributing 120 days of delay under 37 C.F.R. § 1.704(c)(10) to Applicants is improper. Applicants should not be penalized for drawing the Office's attention to an Office error in the patent term adjustment calculation.

In view of the above facts, this application is currently entitled to 15 days of patent term adjustment under 37 C.F.R. § 1.703. As stated above, in response to Applicants' Request for Reconsideration, the Office noted that the correct patent term adjustment at

the time of the mailing of the Notice of Allowance is 10 days. In addition, 5 days for Office delay under 37 C.F.R. 1.703(a)(6) should be added to the 10 days of patent term adjustment at the time of the mailing of the Notice of Allowance. As such, the total patent term adjustment is 15 days.

The present patent is not subject to a Terminal Disclaimer.

### CONCLUSION

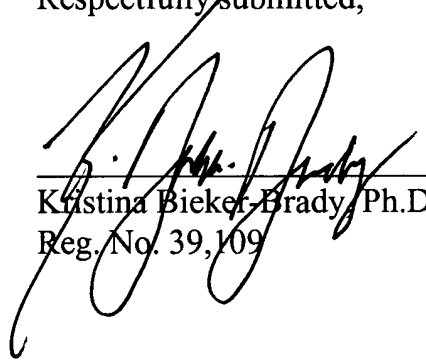
Applicants submit that the current patent term adjustment should be 15 days and hereby request reconsideration of the patent term adjustment.

Enclosed is a check in the amount of \$200.00 for the fee set forth in 37 C.F.R. § 1.18(e). If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date:

July 16, 2008

  
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## Exhibit 1

10/764,730

NEOPLASM-SPECIFIC POLYPEPTIDES AND THEIR USES

07-24-  
2008::09:06:43**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/764,730

Filing or 371(c) Date:	01-26-2004	USPTO Delay (PTO) Delay (days):	241
Issue Date of Patent:	05-27-2008	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	282
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment(days):	-64	Explanation Of Calculations	

**Patent Term Adjustment History**

Date	Contents Description	PTO(Days)	APPL(Days)
05-07-2008	PTA 36 Months		
05-27-2008	Patent Issue Date Used in PTA Calculation	5	
04-29-2008	Dispatch to FDC	⬆	
04-24-2008	Email Notification	⬆	
04-22-2008	Mail-Record a Petition Decision of Granted for Patent Term Adjustment after Allowance	⬆	
04-21-2008	Record a Petition Decision of Granted for Patent Term Adjustment after Allowance	⬆	
04-21-2008	Record a Petition Decision of Granted for Patent Term Adjustment after Allowance	⬆	
04-11-2008	Adjustment of PTA Calculation by PTO	⬆	
04-11-2008	Adjustment of PTA Calculation by PTO		64
01-22-2008	Miscellaneous Incoming Letter		120
02-12-2008	Application Is Considered Ready for Issue		⬆
01-22-2008	Issue Fee Payment Verified		⬆
01-22-2008	Petition Entered		⬆
01-22-2008	Issue Fee Payment Received		⬆
11-29-2007	Sequence Forwarded to Pubs on Tape		⬆
11-21-2007	Electronic Review		⬆
11-20-2007	Email Notification		⬆
11-19-2007	Mail Notice of Allowance		⬆
11-04-2007	Document Verification		⬆
11-14-2007	Notice of Allowance Data Verification Completed		⬆
08-24-2007	Information Disclosure Statement considered		⬆
08-31-2007	Date Forwarded to Examiner		⬆
08-31-2007	Date Forwarded to Examiner		⬆
08-24-2007	Request for Continued Examination (RCE)		⬆
08-31-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		⬆
08-24-2007	Request for Extension of Time - Granted		⬆
08-24-2007	Information Disclosure Statement (IDS) Filed		⬆
08-24-2007	Request for Foreign Priority (Priority Papers May Be Included)		⬆

08-24-2007	Information Disclosure Statement (IDS) Filed	↑
08-24-2007	Information Disclosure Statement (IDS) Filed	↑
08-24-2007	Workflow - Request for RCE - Begin	↑
03-21-2007	Mail Final Rejection (PTOL - 326)	↑
03-16-2007	Final Rejection	↑
12-22-2006	Information Disclosure Statement considered	↑
12-22-2006	Information Disclosure Statement (IDS) Filed	↑
12-22-2006	Information Disclosure Statement (IDS) Filed	↑
12-22-2006	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	↑
12-22-2006	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	↑
01-09-2007	Date Forwarded to Examiner	↑
12-22-2006	Response after Non-Final Action	93
12-22-2006	Request for Extension of Time - Granted	↑
06-20-2006	Mail Non-Final Rejection	↑
06-12-2006	Non-Final Rejection	
04-27-2006	Information Disclosure Statement considered	
03-29-2004	Information Disclosure Statement considered	
05-15-2006	Case Docketed to Examiner in GAU	
04-27-2006	Information Disclosure Statement (IDS) Filed	
04-27-2006	Information Disclosure Statement (IDS) Filed	
05-03-2006	Date Forwarded to Examiner	
04-27-2006	Response to Election / Restriction Filed	69
04-27-2006	Request for Extension of Time - Granted	↑
01-11-2006	IFW TSS Processing by Tech Center Complete	↑
11-17-2005	Mail Restriction Requirement	236
11-14-2005	Requirement for Restriction / Election	↑
07-05-2005	Case Docketed to Examiner in GAU	↑
03-29-2004	Information Disclosure Statement (IDS) Filed	↑
03-29-2004	Information Disclosure Statement (IDS) Filed	↑
10-14-2004	Preliminary Amendment	↑
11-17-2004	Case Docketed to Examiner in GAU	↑
11-03-2004	Application Return from OIPE	↑
11-03-2004	Application Return TO OIPE	↑
11-03-2004	Application Dispatched from OIPE	↑
11-03-2004	Application Is Now Complete	↑
10-12-2004	Additional Application Filing Fees	↑
10-12-2004	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	↑
10-12-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	↑
10-25-2004	CRF Is Good Technically / Entered into Database	↑
08-10-2004	Notice Mailed--Application Incomplete--Filing Date	↑

## Assigned

03-23-2004	Cleared by L&R (LARS)	↑
03-11-2004	Referred to Level 2 (LARS) by OIPE CSR	↑
02-03-2004	IFW Scan & PACR Auto Security Review	↑
01-26-2004	Initial Exam Team nn	↑

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